

SCHEDULE 14A  
Proxy Statement Pursuant to Section 14(a)  
of the Securities Exchange Act of 1934 (Amendment No. \_\_)

Filed by the Registrant ☐

Filed by a Party other than the Registrant ☐

Check the appropriate box:

- ☐ Preliminary Proxy Statement  
☐ Confidential, for Use of the Commission Only (as permitted by Rule 14a-6(e)(2))  
☐ Definitive Proxy Statement  
☐ Definitive Additional Materials  
☐ Soliciting Material Under Rule 14a-12

**VIVUS, Inc.**

(Name of Registrant as Specified In Its Charter)

**First Manhattan Co.  
First Health, L.P.  
First Health Limited  
First Health Associates, L.P.  
First BioMed Management Associates, LLC  
First BioMed, L.P.  
First BioMed Portfolio, L.P.  
Sarissa Capital Management LP  
Sarissa Capital Offshore Master Fund LP  
Sarissa Capital Domestic Fund LP  
Michael James Astrue  
Rolf Bass  
Jon C. Biro  
Samuel F. Colin  
Alexander J. Denner  
Johannes J.P. Kastelein  
Melvin L. Keating  
David York Norton  
Herman Rosenman**

(Name of Person(s) Filing Proxy Statement, if other than the Registrant)

Payment of Filing Fee (check the appropriate box):

- ☐ No fee required.  
☐ Fee computed on table below per Exchange Act Rule 14a-6(i)(4) and 0-11.
- 1) Title of each class of securities to which transaction applies:
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- 2) Aggregate number of securities to which transaction applies:
- 3) Per unit price or other underlying value of transaction computed pursuant to Exchange Act Rule 0-11 (set forth the amount on which the filing fee is calculated and state how it was determined):
- 4) Proposed maximum aggregate value of transaction:
- 5) Total fee paid:

£ Fee paid previously with preliminary materials.

£ Check box if any part of the fee is offset as provided by Exchange Act Rule 0-11(a)(2) and identify the filing for which the offsetting fee was paid previously. Identify the previous filing by registration statement number, or the Form or Schedule and the date of its filing.

- 1) Amount Previously Paid:
  - 2) Form, Schedule or Registration Statement No.:
  - 3) Filing Party:
  - 4) Date Filed:
-

On July 17, 2013, First Manhattan Co. and its affiliates (“First Manhattan”) sent a letter to the independent directors of the board of directors (the “Board”) of VIVUS, Inc. (“Vivus”) responding to a press release issued by Vivus on July 16, 2013. A copy of the letter is filed herewith as Exhibit 1.

On July 17, 2013, Daniel Burch, on behalf of MacKenzie Partners, Inc. (“MacKenzie”), sent a letter to certain Vivus stockholders explicitly confirming that MacKenzie has never conducted a proxy solicitation campaign through the use of “robo-calls”. A copy of the letter is filed herewith as Exhibit 2.

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First Manhattan Co.  
399 Park Avenue  
New York, NY 10022

July 17, 2013

J. Martin Carroll  
Charles J. Casamento  
Mark Logan  
Ernest Mario, Ph.D.  
Jorge Plutzky, M.D.  
Linda M. Dairiki Shortliffe, M.D.  
Robert N. Wilson  
VIVUS, Inc.  
351 E. Evelyn Avenue  
Mountain View, CA 94041

To the Independent Directors of VIVUS, Inc.:

We are writing to request that you desist in your practice of making false accusations with respect to First Manhattan Co. ("FMC").

In your press release issued yesterday afternoon, you wrongly accused FMC of conducting a "campaign of misleading statements" by "robo-call," clearly implying that this alleged "robo-call" campaign was designed to mislead retail stockholders of VIVUS, Inc. ("Vivus") on a large scale. Furthermore, you alleged that corrective disclosure was required so that stockholders have accurate information on which to make their voting decision. These accusations are untrue.

You allege that MacKenzie Partners, Inc., our proxy solicitor, conducted a "robo-call" campaign. Dan Burch, the Chief Executive Officer of MacKenzie Partners, has represented to us that MacKenzie does not conduct proxy solicitations through the use of "robo-calls", and has not done so in this case. Moreover, Mr. Burch has represented that all calls have been made by individuals associated with MacKenzie. Your allegation is untrue.

Our press release announcing the ISS recommendation clearly and accurately reported its conclusions. The press reports covering this contest all did the same. The Vivus stockholders had fully accurate information well in advance of the scheduled July 15 Annual Meeting, and your claimed basis for delaying the meeting to give the stockholders sufficient time to make informed decisions is preposterous.

You allege that FMC purposefully failed to file required disclosures with the SEC. There has been no such failure, purposefully or inadvertently – this is again untrue. Nothing that is required to

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have been filed with the SEC has not been filed. In addition, unlike you, we have told the SEC the truth about our conduct; we have not been required to make any corrective filings or disclosures on this matter. Your allegation is untrue.

Your pattern of making false accusations against First Manhattan is unacceptable. You appear to be engaged in a greater campaign to distract the Vivus stockholders from your record of value destruction, to entrench yourselves, to disenfranchise the stockholders, and to delay the day of reckoning. This conduct must stop.

The stockholders have voted and it is your duty to honor the results of this election. We are confident that a new board will allow owners of Vivus to realize the value of their investment.

Very truly yours,

Dr. Sam Colin  
Senior Managing Director  
First Manhattan Co.

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105 Madison Avenue, New York, NY, 10016  
Tel: 212-929-5500 Fax: 212-929-0308

New York London Los Angeles Palo Alto Washington

July 17, 2013

Ladies and Gentlemen,

On July 16, 2013, VIVUS, Inc. issued a press release accusing First Manhattan Co. and thereby our firm of soliciting stockholders of Vivus through a large-scale "Robo-Call" campaign. In order to address any concerns regarding such accusations, I am providing this letter to explicitly confirm that MacKenzie Partners, Inc., since I co-founded it, has never – not once - in more than 20 years - conducted a proxy solicitation campaign through the use of "Robo-Calls". To be explicit, neither we nor any other party working with our client, First Manhattan, has employed such tactics in this proxy contest between First Manhattan and Vivus in any manner, shape or form.

Furthermore, in my over 40 year career in this industry, at no time since I began did any of the three firms with which I was employed use Robo-Calls in well over 1000 proxy contests and literally thousands and thousands of annual and special meetings – millions of retail calls were conducted by live well-trained and supervised men and women. I don't believe in these machine made or recorded political election type of impersonal mass marketing tools and we do not employ them in our campaigns.

To be clear, in proxy contest assignments, we solicit institutions and most significant retail shareholders by mail, internet and the media and by phone or direct in person meetings. Multiple direct telephone calls are placed by our team to retail holders to explain the issues and answer questions and encourage them to vote – in this case for First Manhattan's nine nominees – they also generally provide details about how to vote by telephone or internet. When they can't reach a shareholder after several attempts, they may leave a short message with our 800 number to call back and a sort message as to why they were calling on their answering machine or more likely the cloud these days. Our retail telephone solicitors are not paid by the vote or by the call they are hourly. Our only business is proxy solicitation and providing related corporate governance advice – we do not sell credit cards or products or make collections or host unrelated "Hot Lines" for products, warranties or other services.

Should you have any questions, please do not hesitate to contact me at (212) 929-5748.

Sincerely,

Daniel H. Burch  
Chairman and Chief Executive Officer

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